In the Supreme Court of the United States.

OCTOBER TERM, 1904.

THE UNITED STATES, APPELLANT,
v.
JU TOY, APPELLEE.
No. 535.

ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

MOTION TO ADVANCE.

The Solicitor-General, on behalf of the United States, respectfully moves that the above-entitled cause be advanced on the docket and assigned for hearing during the present term at as early a day as the convenience of the court will permit.

This is a *habeas corpus* case instituted in behalf of a Chinaman seeking admission wherein the writ was granted after appeal to the Secretary upon a bare allegation of citizenship and a new trial on questions of fact was granted. It is here upon a request for instructions submitted by the circuit court of appeals for the ninth circuit.

The questions propounded are designed to ascertain the effect which should be given in *habeas corpus* proceedings to the action of executive officers who

have denied admission into the United States to a person of Chinese descent claiming birth therein, when such officers have found that claim to be false, and upon appeal to the Secretary of Commerce and Labor their action has been affirmed. They follow—

Question 1. Should a district court of the United States grant a writ of *habeas corpus* in behalf of a person of Chinese descent being held for return to China by the steamship company which brought him therefrom, who having recently arrived at a port of the United States made application to land as a native-born citizen thereof and who, after examination by the duly authorized immigration officers, was found by them not to have been born in the United States, was denied admission and ordered deported, which finding and action upon appeal was affirmed by the Secretary of Commerce and Labor, when the foregoing facts appear to the court and the petition for the writ alleges unlawful detention on the sole ground that petitioner does not come within the restrictions of the Chinese exclusion acts because born in and a citizen of the United States, and does not allege or show in any other way unlawful action or abuse of their discretion or powers by the immigration officers who excluded him?

Question 2. In a *habeas corpus* proceeding should a district court of the United States dismiss the writ, or should it direct a new or further hearing upon evidence to be presented where the writ had been granted in behalf of a person of Chinese descent being held by the steamship company for return to China from whence it brought him, who recently arrived from that

country and asked permission to land upon the ground that he was born in and was a citizen of the United States, when the uncontradicted return and answer show that such person was granted a hearing by the proper immigration officers, who found he was not born in the United States; that his application for admission was considered and denied by such officers, and that the denial was affirmed upon appeal to the Secretary of Commerce and Labor, and where nothing more appears to show that such executive officers failed to grant a proper hearing, abused their discretion, or acted in any unlawful or improper way upon the case presented to them for determination?

Question 3. In a *habeas corpus* proceeding in a district court of the United States, instituted in behalf of a person of Chinese decent being held for return to China by the steamship company which recently brought him therefrom to a port of the United States, and who applied for admission therein upon the ground that he was a native-born citizen thereof, but who, after a hearing, the lawfully designated immigration officers found was not born therein, and to whom they denied admission, which finding and denial, upon appeal to the Secretary of Commerce and Labor, was affirmed, should the court treat the finding and action of such executive officers upon the question of citizenship and other questions of fact as having been made by a tribunal authorized to decide the same and as final and conclusive, unless it be made affirmatively to appear that such officers, in the case submitted to them, abused the discretion vested in them, or in some other

way in hearing and determining the same committed prejudicial error?

At the last term the case of *The United States* v. *Sing Tuck* (164 U. S., 161) was brought here by certiorari, advanced upon the docket and heard. In that case a writ of *habeas corpus* was originally allowed in behalf of a Chinese person claiming birth in the United States who had been denied admission by immigration officers, upon a bare allegation of citizenship and before appeal to the Secretary of Commerce and Labor. It was then pointed out that the action of Chinese seeking admission by means of *habeas corpus* proceedings and new trials in court of all matters of fact was swamping the courts with fraudulent litigation and rendering proper enforcement of the exclusion laws impossible. The judgment of the trial court dismissing the writ upon motion made after a return showing action of the officers upon application to enter was sustained by this court in an opinion by Mr. Justice Holmes, in the course of which he said (p. 170):

> We are of opinion that the attempt to disregard and override the provisions of the statutes and the rules of the Department and to swamp the courts by a resort to them in the first instance must fail. We may add that, even if it is beyond the power of Congress to make the decision of the Department final upon the question of citizenship, we agree with the circuit court of appeals that a petition for *habeas corpus* ought not to be entertained unless the court is satisfied that the petitioner can make out at least

> a *prima facie* case. A mere allegation of citizenship is not enough; but, before the courts can be called upon, the preliminary sifting process provided by the statutes must be gone through with. Whether after that a further trial may be had we do not decide.

Since the decision in the *Sing Tuck* case the former plan of Chinese seeking admission because of alleged birth in this country has been modified by interposing formal appeals from the action of the immigration officers to the Secretary of Commerce and Labor; and when such appeals are overruled they sue out writs of *habeas corpus* upon mere allegations of citizenship as formerly and then demand entirely new trials upon that question before the court. There have been very many such cases during the last year at San Francisco wherein, as in the present case, the United States district court granted the writs as of course, refused to dismiss them upon returns showing full investigation by immigration officers, and permitted entirely new trials upon the question of citizenship without reference to proof or record before those officers.

The present situation differs from the former one in that a formal appeal is now made to the Secretary of Commerce and Labor before the writs are sued out. The last plan requires a little more time than the old one, but manifestly is open to the same objections and abuses.

The orderly administration of the Chinese-exclusion law, where citizenship is claimed, remains impossible

under the repeated rulings of the district court at San Francisco. The transparent device of taking a formal appeal to the Secretary of Commerce and Labor has been permitted to destroy the effect of the opinion and judgment of this court in the *Sing Tuck* case and to render the investigation by and the action of the immigration officers of no avail—makes them, indeed, little short of farcical.

The courts in California are flooded with cases of the kind above described and their immediate relief is exceedingly desirable.

The questions submitted by the circuit court of appeals have been carefully framed in order to secure an authoritative opinion from this court on the fundamental principles involved. The Government regards it as highly important to know whether the action and findings of immigration officers are of any effect when the applicant for admission chooses to allege citizenship. An early decision will be of great assistance in administering the Chinese exclusion laws and also the general immigration laws under which the same questions may at any time arise. And it will secure prompt disposition of many cases now pending.

I respectfully submit that the case merits the consideration of the court at an early day during the present term.

HENRY M. HOYT,
Solicitor-General.

O